IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7962 of 2003
To
SPECIAL CIVIL APPLICATION No 7965 of 2003
with
Special Civil Applications No. 8202 & 8312 of 2003
with
Special Civil Applications No. 8293 to 8301 of 2003
with
Special Civil Applications No. 8304 to 8307 of 2003
with
Special Civil Applications No. 9290 to 9294 of 2003
with
Special Civil Applications No. 9296 to 9298 of 2003
with
Special Civil Application No. 8931 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JETALBEN JAYANTIBAHI PARKAR & Others.

Versus

GUJARAT SECONDARY & HIGHER SECONDARY EDUCATION BOARD & Others.

Appearance:

1.SPECIAL CIVIL APPLICATION No 7962 of 2003
To
SPECIAL CIVIL APPLICATION No 7965 of 2003
with
Special Civil Applications No. 8202 & 8312 of 2003
MR JD AJMERA for Petitioners.
MR AD OZA, with Mr. Dipak R. Dave, with Mr. Hemang Raval for Respondents.

2.Special Civil Applications No. 8293 to 8301 of 2003
with
Special Civil Applications No. 8304 to 8307 of 2003
Mr. VH Desai for petitioners.
Mr. AD Oza, with Mr.Dipak R. Dave,with Mr. Hemang Raval for Respondents.

3. Special Civil Applications No. 9290 to 9294 of 2003
with
Special Civil Applications No. 9296 to 9298 of 2003
Mr. HJ Nanavati for petitioners.
Mr. AD Oza, with Mr. Dipak R. Dave with Mr.Hemang Raval for Respondents.

4. Special Civil Application No. 8931 of 2003
Ms. Heena Desai for petitioner.
Mr. AD Oza, with Mr. Dipak R. Dave,with Mr. Hemang Raval for Respondents.

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CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 06/08/2003

CAV JUDGEMENT

Following Special Civil Applications are filed under Article 226 of the Constitution of India challenging the cancellation of result of the subjects of the Post Basic Stream of Standard 12th as mentioned in the respective orders passed by the Gujarat Secondary and Higher Secondary Education Board, Gandhinagar.

Sr. No.	SCA No.	Name of Petitioner.	Irregularity committed in Subject/s.	Type of Irregularity
1.	7962/2003	Jetalben J.Parmar	Samaj Navrachna	Triangle Mark
2.	7963/2003	Kalpesh V.Chaudhari	Krushi Gopalan-2	Triangle Mark

3. 7964/2003 Chandrikaben G.Patel Samaj Navrachna, Triangle Mark
Sahakar.

4. 7965/2003 Ranjanben V.Chandra- Sahakar Triangle Mark
mamiya. Use of black
pen.

5. 8202/2003 Chandrikaben D.
Parmar Krushi Gopalan-2 Triangle Mark

6. 8312/2003 Lataben C. Parmar Sahakar Triangle Mark

7. 8293/2003 Solanki Kanjibhai B. Krushi-1 Embossed
Seat Number.

8. 8294/2003 Desai Jitendra S. Panchayatiraj & Embossed
(Minor) Krushi-1 Seat Number.

9. 8295/2003 Desai Ashishkumar B. Sahakar, Embossed Name
Panchayatiraj & & Seat Number.
Krushi-1

10. 8296/2003 Shrimali Mitulben L. Sahakar & Krushi Embossed
Gopalan-1 Seat Number.

11. 8297/2003 Desai Sonalben A. Krushi Gopalan - Embossed
1 & 2,Panchayati- Name & Seat
raj & Sahakar. Number.

12. 8298/2003 Desai Kamleshkumar Krushi Gopalan Embossed
H. 1 & 2,Panchayati- Name & Seat
raj & Sahakar. Number.

13. 8299/2003 Desai Hetalben M. Krushi-1, Written Name
Panchayatiraj &
Sahakar.

14. 8300/2003 Chauhan Hiralben S. Krushi Vidya-1, Written Name
Samaj Navrachna and Number
Panchayatiraj & Embossed.
Sahakar.

15. 8301/2003 Desai Shilpaben G. Samaj Navrachna, Embossed
Krushi-1 & 2. Seat Number

16. 8304/2003 Parmar Geetaben G. Sahakar Written Name
in Short.

17. 8305/2003 Thakor Niruben A. Panchayatiraj & Written Name
Krushi 1 & 2

18. 8306/2003 Thakor Geetaben P. Krushi Gopalan-1 Written Name
Panchayatiraj.

19. 8307/2003 Sonivadia Amiben S. Krushi Vidya, Written Name
Sahakar &
Panchayatiraj.

20. 9290/2003 Pathan Imrankhan A. Krushi Gopalan-1 Embossed
Seat Number.

21. 9291/2003 Mod Nijambhai Kasam- Samaj Navrachna Star Mark.
bhai.

22. 9292/2003 Lakum Manubhai Krushi-1 Embossed
Joshangbhai Seat Number

23. 9293/2003 Gabu Alpeshbhai Krushi-1 Embossed
Lagharbhai. Seat Number &
Sign.

24. 9294/2003 Lakum Gambhir Krushi-1 Embossed
Talshibhai Seat Number.

25. 9296/2003 Palaliya Rameshbhai Samaj Navrachna Embossed
Kanabhai Seat Number.

26. 9297/2003 Patel Mansukh Hans Samaj Navrachna Star Mark
rajbhai.

27. 8931/2003 Rathod Vijaysinh Panchayat Signed in
Lagharbhai. Supervisor's
Signatures'
Column.

28. 9298/2003 Vishal Karsanbhai G. Sahakar Krushi-1 Embossed
& Samaj Navrachna Seat Number.

2. As far as the first group of petitions represented by Mr. JD Ajmera, the learned advocate, is concerned, it is their case in their respective petitions that the petitioners had appeared in the Standard 12th Board Examination conducted by the respondent Board in March 2003 and the petitioners have received notices from the respondent Board on different dates, inter alia, stating that the petitioners had committed irregularity in the examination in the paper mentioned in the said notices, by putting some indications like "Triangle" while writing question numbers and hence they were called upon to show cause as to why their results should not be cancelled. The

petitioners were also asked to personally remain present on the dates mentioned in the respective notices before the Examination Committee. In some of the cases, the petitioners have tendered written reply to the Committee. However, without considering the said reply, the Committee took the decision that the petitioners had confessed the irregularities. It is further stated by the petitioners in this group of petitions that the petitioners had shown certain answer books which had been prepared by the respondent Board as model answer books in a book form and it is publicly available, indicating that the question numbers are written either in triangle or square and the same has not been treated as any irregularity by the Board. Despite this fact, the respondent Board had passed orders, whereby the petitioners Standard 12th result in some of the subjects of Post Basic Stream examination held in March 2003 have been cancelled and further informed that the petitioners would be entitled to appear in examination in March 2004.

3. As far as second group of petitions represented by Mr. VH Desai, learned advocate is concerned, the case of these petitioners was that the petitioners' results were cancelled on the ground that the petitioners have written their seat numbers on the 1st page of the answer sheet in such a manner that the same also appeared on Page No.3 of the same answer sheet and in this manner the petitioners have put their identification marks in the answer sheets. Here also, show cause notices were issued by the respondent Board and replies were also submitted, however, without considering the said reply, the petitioners were pressurized to accept their guilt as otherwise the petitioners would be debarred for a period of 3 years. Orders were, thereafter, passed cancelling the result of some of the subjects of Post Basic Stream of Standard 12th examination held in March 2003.

4. As far as the third group of petitions represented by Mr. HJ Nanavati, learned advocate, is concerned, the case of the petitioners is that the petitioners' results were cancelled on the ground that the petitioners had either written their seat numbers in the answer sheets or put some identification marks by writing the seat number on 1st page of answer sheet with pressure so that the seat number may appear on the 3rd page of the same answer sheets. In these cases also, the show cause notices were issued, explanations were called for and ultimately same type of orders were passed by the respondent Board cancelling the result of

particular subject mentioned in the order and the petitioners were informed to appear in the examination of March 2004.

5. As far as Special Civil Application No. 8931 of 2003 represented by Ms. Heena Desai, the learned advocate is concerned, the result was cancelled on the ground that the petitioner wrote name at the place where the Supervisor was to put his signature. Mr. JD Ajmera, ld. advocate appearing for the petitioners submits that there was no evidence to the effect that the petitioners have committed any irregularity in the answer sheet. He has further submitted that when there is specific denial by the petitioners, it is the duty of the respondent Board to investigate into the matter and then only to draw a conclusion whether so-called irregularities were committed by the petitioners. He has further submitted that the replies submitted by the petitioners were not considered by the respondent Board and the entire case was proceeded against the petitioners only on solitary ground that the petitioners have admitted their guilt before the Examination Committee. He has further submitted that all the petitioners were minors and were of tender age and they were not allowed to be accompanied by their parents or teachers while appearing before the Examination Committee and under duress or threat, the petitioners were compelled to admit their guilt before the Examination Committee. Mr. Ajmera has further submitted that the answer sheets in question were examined by the Examiners and thereafter the said answer sheets were also checked by the Supervisors and by the Moderator. None of them has found any irregularity and it is only thereafter the show cause notices were issued and impugned orders were passed against the petitioners.

6. Mr. Ajmera has further submitted that before cancelling the results of the petitioners, it is the duty of the respondent Board to consider the quality of the papers supplied to the students appearing in the examinations because if any one writes with some pressure on Page No.1 the same would carry an impression of the said writing on Page No.3 also. They should depend upon the quality of the papers on which the students are writing. He has further submitted that unless there is a specific conclusion drawn by the respondent Board that identification mark was made only with certain intention, the respondent Board cannot take any penal action against the petitioners as it would amount to total non-application of mind on the part of the respondent Board.

7. Mr. HJ Nanavati, ld. advocate, appearing for the petitioners in 3rd group of petitions, has submitted that the action of the respondent Board is arbitrary, illegal, unjust and improper inasmuch as when the respondent Board has been vested with the authority and power to regulate the public examination in the State, it is expected from the authorities to act fairly, bona fide and transparently in all its dealings, transactions and approach. He has further submitted that in the case of the petitioners, the respondent Board has called the petitioners to offer their explanation in respect of the alleged irregularities, they have been forced to sign a prewritten documents in which what has been mentioned, the petitioners were not aware and on the basis of the said document, the punishments have been inflicted upon the petitioners. He has further submitted that the case of adopting illegal use of means in the public examinations can be dealt with strictly by the respondent Board, but at the same time the respondent Board is also supposed to look into the totality of the facts and if there is no mens rea or any oblique motive of the students appearing in the examination, there is no justification on their part to cancel the results of the petitioners. Mr. Nanavati has further submitted that the manner in which the inquiry was conducted by the Examination Committee is in violation of the principles of natural justice as the petitioners were only asked a question as to whether they would sign a pre-written paper or not, and, if yes, the order like impugned herein was to follow, and, if not, the fate would be of debarring the petitioner from Board examination for a period of three years.

8. Mr. VH Desai, learned advocate appearing in the 2nd group of petitions, more or less, adopted the arguments of Mr. Ajmera and Mr. Nanavati, and submitted that the action taken by the respondent Board with regard to cancellation of the result of the petitioners is absolutely unjust, uncalled for, contrary to the principles of natural justice and it has adversely affected the very bright and promising career of the students in question. The said orders are, therefore, required to be quashed and set aside and the respondent Board is required to be directed to pronounce the result of the petitioners forthwith.

9. Over and above these arguments, the learned Advocates appearing for the petitioners have further submitted that there were discrepancies between the notices issued and the orders passed in consequence of

the said notices. The orders were passed in a stereotyped and mechanical manner and no reasons were given while passing such orders. The Respondent Board has failed to establish the motive behind putting the notification marks on the answer sheets, nor the Board has disclosed the basis for alleged collusion between the petitioners and the teachers or the School management. Even the relevant materials were not placed before the petitioners. It is further submitted that in one of these petitions, a specific allegation is made that though the show cause notice was issued in the case of Desai Shailesh Mafatbhai who is the relative of the Examination Secretary, the proceedings were dropped subsequently against him. It was only because of the partiality shown to that student, the proceedings were dropped against him, whereas all the petitioners who are before this Court were punished despite the fact that no malpractice or irregularity was committed by them.

10. Mr. Ajmera has relied on the decision of this Court in the case of Ketan Shivkumar Trivedi v. Gujarat Higher Secondary Education Board, Gandhinagar 24 (2) GLR Page 1373, for the proposition that orders passed are violative of the principles of natural justice. The Court has held as under :

> "Reports of the examiner and building conductor which were considered by the examination committee before it passed the impugned order against the petitioner were not shown to the petitioner. It is, therefore, obvious that the examination committee while it passed the orders of punishment against the petitioner did take into consideration material collected behind the back without giving any opportunity to the petitioner to meet the same or to have his own say in the matter against the said reports. This has introduced a fatal infirmity in the order of punishment and it must be held that the petitioner did not get reasonable opportunity to have his say in the matter and to meet the charge of misconduct levelled against him."

11. This Court has issued notices, on different dates in all of these petitions, directing the respondent Board to depute a responsible person from the Board along with the relevant answer sheets in each of the petitions. Since more or less a common question is

involved in all these petitions, the same were taken up for final hearing on the same day. The respondent Board has also filed affidavit-in-reply in most of the cases and the Court has also seen and verified the answer sheets produced before it by the respondent Board. In some cases, wherever some specific demand is made to that effect, the same were also shown to the learned advocates appearing for the petitioners. In some of the cases, Rule was issued by the Court and where Rule was not issued but the matters are kept for final disposal, Rule is issued and the same is waived by Mr. AD Oza, the learned advocate with Mr. Dipak Dave, ld. advocate appearing for the respondent Board.

12. Mr. AD Oza, the learned advocate along with Mr. Dave, the learned advocate appearing for the respondent Board, submitted that the petitioners have indulged in malpractices in the HSC Examinations conducted by the respondent Board in March 2003. He has further submitted that the Board has, after following due procedure of law, rightly cancelled the results of the petitioners. He has further submitted that as far as 1st group of petitions is concerned, the petitioners had appeared in HSC Examination in Post Basic Stream in March 2003 from Nutan Bhartiya Vidyalaya, Madangadh, Taluka-Palanpur. The petitioners in 2nd group of petitions are from Shri Uchhatar Buniyadi Vidyalaya and the petitioners in 3rd group of petitions are from Uttar Buniyadi Vidyalaya. In this post basic stream in all 3825 students have appeared in the examination through out the State of Gujarat and 2581 students were declared as passed. He has further submitted that for post basic stream, the Central Assessment Centre was Swaminarayan Gurukul Vidyalaya, Zundal, District-Gandhinagar where all the answer sheets of subjects of post basic stream and some of the answer sheets of vocational stream were accumulated and assessed. In Post Basic Stream, there are four subjects and in General Stream, there are also four subjects. The answer sheets of 4 Post Basic Stream subjects were kept separately and answer sheets of 4 general subjects like Gujarati, Hindi and Social Studies were mixed and assessed with the answer sheets of students who appeared in General Stream.

13. Mr. Dave has further submitted that when the assessment work was going on, the Secretary of the Board, Dr. GK Patel has received oral information regarding certain irregularities committed by the students in the answer sheets and hence Dr. Patel has personally visited the said Centre and found that many students have marked some signs like triangle, square

etc., or have written their names in their answer sheets or wrote their seat numbers with pressure for identification. Dr. Patel therefore informed this fact to the Chairman of the Board and on 22nd April 2003 a Committee was formed for verification at the said Assessment Centre. The Committee has visited the said Assessment Centre and found that in certain answer sheets, some identification marks like triangle, square etc., were found. The Committee has found a total of 775 answer sheets of 514 students wherein such type of identification marks were made and out of these students, 29 students from Nutan Bhartiya Vidyalaya, Taluka-Palanpur have done triangle marks in the answer sheets and other students from other Schools put other identification marks and accordingly actions were taken against these students.

14. Mr. Dave has further submitted that in all these cases, not only the students, but the teachers of the same school who were the Examiners are also involved in the malpractice committed by the students. He has further submitted that the management of the School was also involved in facilitating the students for commission of such malpractices with a view to get more percentage of result of their schools. The Committee has also found that the teachers and students of some of the Post Basic Stream were involved with one another for the purpose of identification of the answer sheets and because of that students of Nutan Bhartiya Vidyalaya, Madangadh, Taluka-Palanpur have marked triangle for identification while students of other schools have marked square for identification of the students. Mr. Dave has further submitted that the answer sheets of all the Post Basic Stream subjects were mixed subject-wise for the purpose of assessment and for the purpose of hiding the identity of the students the Board has adopted the practice of affixing Bar Code Sticker but the attempts on the part of the students and teachers by putting the identification marks have frustrated the basic purpose of affixing the Bar Code Sticker. He has further submitted that the Committee of expert teachers consisting of 10 numbers has verified and found the identification marks in the answer sheets which are deliberate. They have also found that there was over-assessment in those cases, where identification marks were found.

15. Mr. Dave has further submitted that the petitioners have not put up any identification mark like a triangle or a square in the answer sheets of Gujarati, Hindi and other subjects of General Stream because such answer sheets are mixed with the answer sheets of

General Stream and thus it is difficult to identify the answer sheets of the petitioners. The total number of students appearing in the General Stream are 3,09,084 and the answer sheets of the general subjects of Post Basic Stream are mixed with the answer sheets of General Stream. This fact itself shows that the identification marks put on the subjects of Post Basic Stream appear to be with some malafide intention and/or to commit malpractice in the examination.

16. Mr. Dave has further submitted that with a view to instruct the students, necessary instructions are printed on the answer sheets itself and the Instructions No. 3 and 6 specifically state that the students must not write the name of any Code/Codes or make any symbol for the purpose of identification of the students and that except fountain pen or ball pen of blue ink no other colour ink pen should be used and the use of any other colour ink pen is prohibited. It is further instructed that the students must not put up any mark on the number of question or sub-question. Despite this specific instruction, the petitioners have put up mark of triangle and used the pen of another colour with a view to disclose their identify and therefore the respondent Board is justified in taking action against the petitioners.

17. Mr. Dave has denied all the allegations made in the petitions. He has also invited the Court's attention to the necessary denial made in the affidavit-in-reply and he has pointed out that no threat or duress was given to any of the petitioners as alleged in the petitions. Since the petitioners themselves have realised their mistakes and the irregularities committed by them, they have admitted their guilt. Now, under the advice which they might have received, in the present petitions they have come out with the fact that the petitioners were threatened and guilt was confessed by them. Mr. Dave has further submitted that there was no arbitrariness much less malafide committed by the Examination Committee and the decisions were given by the Committee absolutely in accordance with law.

18. Mr. Dave has made the same submission with regard to writing of seat number on the 1st page of the answer sheet with pressure so as to have an impression on the 3rd page of the answer sheet and also with regard to putting up an identification mark, namely Star, Square etc. He has further relied on the affidavits-in-reply filed in almost all petitions bringing out the relevant facts and circumstances which ultimately led to the respondent authority to take

action of cancelling the result of the petitioners in the subject of Post Basic Stream.

19. In support of his submissions, Mr. Dave has relied on the Division Bench Judgment of this Court in the case of Rajesh Chandulal Purohit v. Saurashtra University & Anr. - 38 (1) GLR Page 317, wherein, while dealing with the Ordinances 160A and 161AA of Saurashtra University Ordinances, the Court has observed that non-supply of report of observer to the delinquent student would not violate the principles of natural justice as no prejudice was shown to have been caused. The breach alleged was in respect of procedural provision other than that of the fundamental nature. Violation of procedural rule fell in the category of "No proper hearing" rather than "No hearing". In absence of proof of prejudice caused, the action of the University was not liable to be quashed on the ground of breach of principles of natural justice.

20. Mr. Dave has further relied on another Division Bench Judgment of this Court in the case of Gujarat Secondary Education Board & Anr. v. Sunny Dharampalsingh Chaudhary Minor Through his Father Dharampalsingh Chaudhary & Anr. - 42(1) GLR Page 28, wherein it is held as under :

> "In the course of the second enquiry, the Examination Committee has taken into consideration the fact that while the students were caught in the course of copying by the Squad Officer, they gave statement in writing, admitting the fact of possession of copying material with them. The examinees, depending upon the class or standard in which they are studying, may be minor or major (sic). Merely because they are minor boys, it cannot be held that in domestic forum, their admissions cannot be relied on for the purpose of punishing them. Such a rule, if applied, would make it impossible for the educational authorities to maintain discipline in the campus and the examination hall. In the present case, when they were caught copying on a surprise check by the Squad Officer, they admitted in writing that they possessed copying material, which was seized from them, and thereafter, they were allowed to complete the paper. The Examination Committee considered the defence of the students that the admission given by them in the

examination hall was not voluntary, but was made under extreme tension, pressure and fear. The Examination Committee rejected their defence on the ground that soon after the examination was over, no such protest or defence, of admission having been given in writing under fear or pressure, was put forward by the students. The defence of such admission having been given under pressure or fear was set up after a month, when they were served with show cause notices for cancellation of their examination. It was, therefore, clearly an afterthought on their part. This reasoning and conclusion of the Examination Committee in holding the students guilty cannot be held to be an unreasonable conclusion, which could be interfered with by the Court in exercise of powers under Art. 226 of the Constitution of India.

The action of the Board is sustainable on the first charge itself and the Examination Committee cannot be held to have acted unreasonably in rejecting the defence of the students on their alleged admission. The admission was obviously retracted as an afterthought much after they were caught in the examination hall in the course of copying. In the educational field, to hold that admission by examinees in the examination hall cannot constitute evidence against them would be hazardous and against the maintenance of discipline. Where surprise checks in the examination halls are made, that is the general procedure adopted by the invigilators and the members of the Squad.

Findings reached on facts by such domestic forums would not be interfered with by the Court merely on the ground of errors of fact. The writ jurisdiction is supervisory in nature, and a Court exercising the same is not to act as an appellate authority and would not, ordinarily review findings of fact, for if it were to do so, these authorities would become merely transmitting agencies of evidence to the Court, and much of the advantage of administrative adjudication will be lost. Some degree of control on adjudicating authorities is, of course, necessary, but only to check their arbitrariness. A finding of fact reached by a domestic body can be quashed by the Court

only if it is based on "no evidence" or is completely unsupported by evidence. Such is not the case here. The written admissions given by the students in the examination hall was 'substantial evidence' and the learned single Judges fell into the error of examining the facts by reappreciating the evidence and coming to their own conclusions. Such an exercise is not permissible in the process of judicial review, which examines the correctness of the decision making process and not the decision itself."

21. Mr. Dave has further relied on the Judgment of the Hon'ble Supreme Court in the case of Chairman, J & K State Board of Education vs. Feyaz Ahmed Malik and Others - (2000) 3 SCC 59, wherein it is held as under :

"While judging the authority or otherwise all steps taken by authorities of the Board to take action against candidates taking resort to mass malpractice it should be borne in mind that the Board is entrusted with the duty of maintaining higher standards of education and proper conduct of examinations. It is an expert body consisting of persons coming from different walks of life who are engaged in or interested in the field of education and have wide experience. The decision of such an expert body should be given due weightage by courts. In matters concerning campus discipline of educational institutions and conduct of examinations the duty is primarily vested in the authorities in charge of the institutions. In such matters the court should try not to substitute its own views in place of the authorities concerned nor thrust its views on them. That is not to say that the court cannot at all interfere with the decisions of the authorities in such matters. The court has undoubtedly the power to intervene to correct any error in complying with the provisions of the rules, regulations or notifications and to remedy any manifest injustice being perpetrated on the candidates. The approach of the High Court in taking upon itself the task of finding out a scheme to tackle the problem of mass malpractice in examination was erroneous and this vitiated the judgment."

"In judging the validity of a notification containing provisions regarding steps to be taken when a report of mass malpractice is received it is to be kept in mind whether the provisions contained in the notification is relevant for and has a nexus with the purpose to be achieved then the notification cannot be said to be arbitrary and discriminatory. The High Court has failed to keep this principle in view while considering the validity of the notification in question. A notification cannot be struck down as discriminatory merely because in implementing the same injustice is likely to be suffered by some candidates. The High Court was not justified in quashing the notification issued by the Board as ultra vires Article 14 of the Constitution and ultra vires the Act. The impugned judgment does not show that the decision to strike down the two notifications is based on grounds sound in law and justified on facts."

22. I have heard the learned Advocates appearing for the respective parties at great length. I have also considered the arguments made and the contentions raised in the petitions, affidavit-in-reply as well as affidavit-in-rejoinder. I have also gone through the relevant rules and regulations dealing with the subject-matters of all these petitions. I have also given my anxious thoughts and due considerations to the authorities relied upon by the learned Advocates appearing for the respective parties. As stated earlier, the disputed answer-sheets were seen and verified by me. This entire exercise has led me to draw an inevitable conclusion that the petitioners are not as innocents as they are projected before the Court. In the quest for securing better result, the Court prima facie found that the different identification marks placed by the petitioners in the answer-sheets of selected subjects of Post Basic Stream of 12th Standard, are not due to their own action or volition and unless they were guided or instructed by some one, it would not have happened. Who is this some one is a matter of inquiry and investigation and the Respondent Board has undertaken to do this exercise. The fact, however, remains that because of the cancellation of results, the petitioners have lost one valuable year of their career. But, if one takes into consideration the importance of

maintaining high standard of education and one's earnest desire to keep it away from any sort of malpractice or maladjustment by any one, attached to it, the action taken by the Board, does not only seem to be justified, but, on facts found to be encouraged as it would provide necessary impetus to achieve the avowed object of merit-based education and bringing out the real talent of the students. Minor discrepancies here or there would pale into insignificance where the allegations of malpractices at a large extent are made and to some extent, they are substantiated.

23. It is true that there cannot be any compromise with the due observance of the principle of natural justice as it is the backbone of fair and proper justice, but there are bound to have certain dimensional changes when this principle is applied to a given case in the given set of circumstances. The Division Bench of this Court has rightly observed in the case of Rajesh Chandulal Purohit vs. Saurashtra University & Anr. (Supra) that violation of procedural rule fell in the category of "No proper hearing" rather than "No hearing". Here in the present cases, show-cause notices were issued on the petitioners. Their explanations were called for. By and large, the irregularities or the violations of relevant rules were pointed out to them and personal hearings were also given, whether such irregularities or violations of rules are isolated acts or they are forming part of a big racket in the education - and for that purpose, if any inquiry is made and report is not given to or such facts are not disclosed to the petitioners, it would not, by itself, tantamount to the violation of principles of natural justice.

24. Even the fact regarding admission of guilt before the Examination Committee cannot be brushed aside on the ground that the same was not voluntary, but was made under extreme tension, pressure and fear. The Division Bench of this Court has, therefore, rightly observed in the case of Gujarat Secondary Education Board & Anr. vs. Sunny Dharampalsingh Chaudhary (Supra) that the defence of such admission having been given under pressure or fear was set up after a month, when they were served with show cause notices for cancellation of their examination. It was, therefore, clearly an afterthought on their part. Here, in the present cases, the petitioners have admitted before the Examination Committee that they have placed identification marks in the answer sheets and prayed for pardon. Subsequently, while filing petitions before

this Court and challenging the orders of cancellation of results, the petitioners have come forward with the plea that admissions were made under pressure or fear. Such defence cannot be entertained while exercising extraordinary writ jurisdiction under Article 226 of the Constitution of India.

25. One more point which needs to be stated is that the Board has taken a conscious decision of cancelling the results of particular subjects of Post Basic Stream of Standard 12th examination, after making proper inquiries in the matter and after giving reasonable opportunities to the petitioners. There is no doubt about the fact that the Board is entrusted with the duty of maintaining higher standards of education and proper conduct of examinations. In this context, the Hon'ble Supreme Court gave the mandate to all Courts, in the case of Chairman, J & K State Board of Education vs. Feyaz Ahmed Malik and Others (Supra) that in matters concerning campus discipline of educational institutions and conduct of examinations, the duty is primarily vested in the authorities in-charge of the institutions. In such matters, the Court should not try to substitute its own views in place of the authorities concerned nor thrust its own views on them.

26. Lastly, the allegation made with regard to bias or partiality has also no substance as the answersheet of the relative of the Examination Secretary was seen and verified by the members of the Examination Committee and they expressed their opinion that there was no identification mark and what was written at a particular place in the answer-sheet was the answer itself. On the basis of this report, the notice was discharged and proceedings were dropped. This answer-sheet was also shown to the Court and while looking at the said answer in the answer-sheet, the Court does not find any reason not to believe or accept the opinion of the expert committee.

27. This Court, before parting, however thinks fit and proper to give following directions to the respondent authorities.

(i) As stated in the Affidavit-in-Reply filed by the Examination Secretary, the respondent Board is directed to make thorough inquiry into the alleged malpractices of which the petitioners have become victims, and find out as to whether the concerned schools and/or their teachers and management are involved and if they are prima facie found to be involved, necessary actions as

permissible under the law should be taken against them. The Respondent Board is directed to file necessary compliance report of this direction, with the Registry of this Court, on expiry of the period of three months from today.

(ii) The common grievance of the petitioners and of many other students, who are called for personal hearing in connection with show-cause notice for the alleged irregularity or malpractice in the examination, is that the admission of guilt in writing is obtained under pressure or fear. The Respondent Board is, therefore, directed to evolve a formula under which the concerned student is permitted to have the company of at least one person either from his parents or teachers so as to avoid such allegations in future.

(iii) The Respondent Board is directed not to resort to the publications of such Model Answer Books consisting of answer-sheets of bright students of the Board, which contains some identification marks such as square, star, triangle etc. which may give rise to some confusions in the minds of the examinees.

(iv) Since the result of any examination plays very important role in the development of a career of any student, any grievance raised with regard to its correctness or otherwise, should meticulously be redressed, any such applications be processed and disposed of with due care and caution and by way of a speaking order.

(v) All teachers to whom examination work is entrusted and if material irregularities are found in their assessments, comparatively on a large scale, they are made answerable and be made subject to such penal consequences as permissible under the law.

(vi) All those teachers, who are imparting tuitions to their students and if such students are found to have been favoured in the examination irrespective of their merits, are to be summoned to give their explanation in the matter and if they fail to tender their satisfactory explanation or reply, necessary actions be taken against them.

28. Taking overall view of the matter and in the

larger interests of maintaining the high standard of education as well as to keep the examination system free from any polluted atmosphere, the Court, except the aforesaid directions, refuses to exercise its extraordinary powers and jurisdiction under Article 226 of the Constitution of India, in favour of the petitioners. All these petitions are, therefore, dismissed. Rule discharged in all matters with no order as to costs.

rmr. [K.A. Puj, J.]